

EXHIBIT E

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99 PARK AVENUE, PH/26TH FLOOR
NEW YORK, N.Y. 10016

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JUSTICE, NYS SUPREME COURT, RET.
FRANK HANDELMAN

REF: 828900.00000

WRITER'S DIRECT DIAL:
212-277-5824

May 11, 2022

VIA E-MAIL

FOIA/PA Section
Office of General Counsel, Room 924
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534
BOP-OGC-EFOIA-S@bop.gov

USP Thomson
U.S. Penitentiary
Federal Bureau of Prisons
1100 One Mile Road
Thomson, IL 61285
TOM-ExecAssistant@bop.gov

**Re: Freedom of Information Act Appeal - Request for records pertaining
to Decedent Bobby Everson, Reg. No. 14009-052, FOIA No. 2022-
01789**

Dear FOIA Officer:

My office is counsel to Ms. Sabrina Davis Everson (the "Requestor"). I am writing to appeal the Federal Bureau of Prisons' ("BOP") constructive denial of a January 11, 2022 request made by Sabrina Davis Everson pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq. ("the Request").

The Request was submitted to the Federal Bureau of Prisons ("BOP") via e-mail on January 11, 2022 and it requested:

- All documents concerning Bobby Everson including but not limited to his medical records, mental health records, complete inmate file, records from his entire time in the Federal Bureau of Prison's ("BOP") custody;
- All documents concerning assaults, uses of force, and/or unusual incidents involving Bobby Everson. This request applies equally to assaults and/or batteries by BOP staff or

BELDOCK LEVINE & HOFFMAN LLP

FOIA Officer

May 11, 2022

Page 2

incarcerated individuals; and

- All documents concerning the death of Bobby Everson, and/or any investigation into his death, including medical documents, incident reports, after action reports, documents or communications to external agencies such as the Office of Inspector General (“OIG”) or the United States Attorney’s Office (“USAO”).

See Exhibit (“Exh.”) 1, January 11, 2022 FOIA Request.

On January 21, 2022, BOP issued an acknowledgment letter and issuing a ten-day extension to February 10, 2022 to respond to the request as provided by statute. *See* Exh. 2, January 21, 2022 BOP Acknowledgement Letter. On February 10, 2022, BOP failed to respond. On February 17, 2022, counsel to Requestor submitted a letter to BOP by e-mail requesting a timeframe for production of the requested records. *See* Exh. 3, February 17, 2022 Requestor Letter. On February 17, 2022, BOP responded via e-mail and stated, “We are unable to provide an expected date for completion.” *See* Exh. 4, February 17, 2022 BOP Letter.

To date, Ms. Everson has received no documents in response to her request.

Under FOIA, an agency must determine, “within twenty working days, whether or not to comply with a FOIA request.” *Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law v. United States Dep’t of State*, 300 F. Supp. 3d 540, 546 (S.D.N.Y. 2018) (internal quotations omitted); 5 U.S.C. § 552(a)(6)(A)(i) (“Each agency, upon any request for records . . . shall determine within 20 days . . . after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor. . . .”). If the agency cannot produce the records within 20 days, the agency may request an extension of not “more than ten working days.” 5 U.S.C. § 552(a)(6)(B)(ii). All extensions of the time to respond must be made “by written notice to the person making such request setting forth... the date on which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i).

“An agency’s failure to comply with [the statute’s] time limits may be treated as ‘constructive exhaustion’ of administrative remedies,” and authorizes “the requester to seek judicial review immediately.” *Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law v. United States Dep’t of State*, 300 F. Supp. 3d 540, 546 (S.D.N.Y. 2018) (citing 5 U.S.C § 552(a)(6)(C)(i)).

More than twenty business days have passed since the Request was sent to the Freedom of Information Act Officer. More than ten days have passed since the extension requested by BOP on January 21, 2022. The agency’s February 17, 2022 letter did not meet the standards of a permitted extension under 5 U.S.C. § 552(a)(6)(B)(i) as it failed to provide any date on which a determination is expected to be dispatched. The agency has therefore failed to comply with statutory time limits and has constructively denied the Request. Please consider this our internal appeal, submitted within 90 days of BOP’s constructive denial of the Request.

BELDOCK LEVINE & HOFFMAN LLP

FOIA Officer

May 11, 2022

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Please respond to this internal appeal within the statutorily proscribed twenty business days from receiving this appeal. 5 U.S.C § 552(a)(6)(A)(ii). If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Adams', is written over a horizontal line.

Katherine "Q" Adams

Beldock Levine & Hoffman LLP
99 Park Ave., PH/26th Floor
New York, NY 10016
Attorneys for Requestor

BELDOCK LEVINE & HOFFMAN LLP
99 PARK AVENUE, PH/26TH FLOOR
NEW YORK, N.Y. 10016

JONATHAN MOORE
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JUSTICE, NYS SUPREME COURT, RET.
FRANK HANDELMAN

January 11, 2022

REF:

WRITER'S DIRECT DIAL:
212-277-5825
drankin@blhnny.com

VIA EMAIL

FOIA/PA Section
Office of General Counsel, Room 924
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534
BOP-OGC-EFOIA-S@bop.gov

USP Thomson
U.S. Penitentiary
Federal Bureau of Prisons
1100 One Mile Road
Thomson, IL 61285
TOM-ExecAssistant@bop.gov

**Re: Freedom of Information Act Request for records pertaining to
Decedent Bobby Everson, Reg. No. 14009-052**

Dear FOIA Officer:

My name is David B. Rankin, and I am the attorney for Ms. Sabrina Davis Everson related to the death of her son, Mr. Bobby Everson Register No. 14009-052, DOB [REDACTED]. We request the following:

- All documents concerning Bobby Everson including but not limited to his medical records, mental health records, complete inmate file, records from his entire time in the Federal Bureau of Prison's ("BOP") custody;
- All documents concerning assaults, uses of force, and/or unusual incidents involving Bobby Everson. This request applies equally to assaults and/or batteries by BOP staff or incarcerated individuals; and
- All documents concerning the death of Bobby Everson, and/or any investigation into his death, including medical documents, incident reports, after action reports, documents or communications to external agencies such as the Office of Inspector

BELDOCK LEVINE & HOFFMAN LLP

Everson – FOIA BOP

January 11, 2022

Page 2

General (“OIG”) or the United States Attorney’s Office (“USAO”).

We request these records be produced in electronic format, if they are kept in that form and note that the term “document” applies to records in both hard copy and electronic format.

If this request is denied in whole or part, we ask that you describe the nature of the information withheld and justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We are open to negotiating a modification to this request where production of all responsive documents would be unreasonably voluminous.

We further ask that all responsive records be produced as they are identified and gathered, rather than delaying production until all responsive records are found. However, we reserve the right to appeal a decision to withhold any information.

If there are any costs incurred with producing copies of the records requested, you have our advance authorization to incur up to \$500, which amount we will promptly reimburse. If the fees exceed \$500, please contact me before incurring the expense.

Enclosed with this letter are an authorization of representation, Form BP - A0301 authorizing the release of confidential information, Form BP-A621 authorizing the release of medical information, and certificates of identity for myself and Ms. Sabrina Everson.

Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David B. Rankin', with a stylized, flowing script.

David B. Rankin
Partner

BELDOCK LEVINE & HOFFMAN LLP
99 PARK AVENUE
NEW YORK, N.Y. 10016-1503

To: FOIA/PA Section 1
Office of General Counsel, Room 924
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534

TEL: (212) 496-0400
FAX: (212) 557-0565
REF: _____

AUTHORIZATION

MRS. Sabrina D. Everson Mother of Decedent Bobby Everson, Reg. No. 14009-052,
declare under penalty of perjury that the foregoing is true and correct:

I hereby authorize the below identified attorneys to represent me, for the purposes of obtaining my deceased son's personal records. This includes, but is not limited to: criminal records, medical records, mental health records, records obtained through Freedom of Information Act (FOIA) requests, education records, and employment records.

David B. Rankin, Esq.
Regina Power, Esq.
Beldock Levine & Hoffman LLP
99 Park Avenue, PH/26th Floor
New York, New York 10016
T: 212-277-5825 and 212-277-5892
F: 212-277-5880
drankin@blhny.com
rpowers@blhny.com

I further authorize Mr. Rankin, Ms. Powers, or paralegal Abigail Robinson, working on their behalf, to correspond with any and all relevant records custodians necessary to obtain my deceased son's personal records.

Dated: 1/10/22, New York

Sign Name: Mrs. Sabrina D. Everson

1/10/22 2022

Print Name: MRS. Sabrina D. Everson

BP-A0301

JUN 10

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS


AUTHORIZATION TO RELEASE CONFIDENTIAL INFORMATION

TO: David B. Rankin, Esq. and Regina Powers, Esq. of BELDOCK LEVINE & HOFFMAN, LLP
99 Park Avenue, PH/26th Floor, New York, New York 10016

I authorize release to the United States Department of Justice all confidential records and information concerning me.

El abajo firmante autoriza al Funcionario del el Departamento de Justicia de los Estados Unidos a disponer y obtener todos los records e información confidencial referente mi persona.

J'autorise le délégué à U.S. Department of Justice à avoir acces à tous documents et informations de nature confidentielle qui me concernent.

1. Name (Last, First, Middle) NOMBRE (Apellido, Primero & Segundo NOM (de famille, prénom, nom de jeune fille)	2. Date of Birth Fecha de nacimiento DATE DE NAISSANCE
EVerson, Bobby, A.J	
3. Signature Firma Signature	4. Date signed Fecha de la firma DATE DE SIGNATURE
Mrs. Sabrina D. Eversen	1/10/22

FILE IN SECTION 2 UNLESS APPROPRIATE FOR PRIVACY FOLDER

SECTION 2

BP-A621.060

FEB 05

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Inmate Name <u>Bobby Everson</u>	Register Number 14009-052	Date <u>1/10/22</u>

I hereby authorize and request the Federal Bureau of Prisons to:

☒ release information to, or ☐ obtain information from
PLEASE CONTACT IF
PAYMENT IS REQUIRED
PRIOR TO FILLING
REQUESTName/Facility: David B. Rankin, Esq. of BELDOCK LEVINE & HOFFMAN, LLPAddress: 99 Park Avenue, PH/26th FloorCity, State, Zip: New York, New York 10016

I understand the information is to be used for (specific reason for release of information):

☐ Continuation of care, or ☒ Other: Release to Attorney at Patient's request
Information to be Released/Obtained: Copy of and/or information from my medical file pertaining to my evaluation and treatment received from 01/01/2012 to present

This is to include: ☒ Complete Record ☐ Discharge Summary ☐ History & Physical
☐ Operative Reports ☐ Consultations ☐ Progress Notes ☐ X-ray Reports
☐ Laboratory Reports ☐ Pathology Reports ☐ Actual Films** ☐ Actual Slides*
☒ Other: INCLUDING MENTAL HEALTH RECORDS

*will be returned
#duplicates accepted

I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand that information used or disclosed pursuant to this authorization could be subject to redisclosure by the recipient and, if so, may not be subject to federal or state law protecting its confidentiality. I understand that I may revoke this consent at any time by sending a written notice to the Supervisor of Medical Records. I understand that any release which has been made prior to my revocation and which was made in reliance upon this authorization shall not constitute a breach of my rights to confidentiality. This authorization will automatically expire three months from the date of the signature.

Signature of Patient	Date (Month, Day, Year)	Staff Witness
FAX SIGNATURE VALID ORIGINAL		

SPECIFIC AUTHORIZATION FOR RELEASE OF INFORMATION PROTECTED BY STATE OR FEDERAL LAW.
Must sign below, to Release Protected Information.

I specifically authorize the release of data and information relating to:

☒ 1. Substance Abuse ☒ 2. Mental Health ☒ 3. HIV

x Mrs. Sabrina D. Everson
Signature

x 1/10/22
Date

Deliver Records To: (Institution Address & Fax number)

David B. Rankin, BELDOCK LEVINE & HOFFMAN, 99 Park Avenue PH/26th Floor, New York, NY 10016

Phone: 212-277-5825, Fax: 212-277-5880, Email: drankin@blhny.com

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 03/31/17

Privacy Act Statement. In accordance with 28 C.F.R. Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester ¹ MRS. Sabrina D. EversonCitizenship Status ² U.S.A. Citizen Social Security Number ³ [REDACTED]

City [REDACTED]

Date of Birth [REDACTED]

Place of Birth Portchester N.Y.**OPTIONAL: Authorization to Release Information to Another Person**

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:
David B. Rankin, BELDOCK LEVINE & HOFFMAN, LLP, 99 Park Avenue, PH/26th Floor, New York, New York 10016

Print or Type Name

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature ⁴ Mrs. Sabrina D. Everson Date 1/10/22

¹ Name of individual who is the subject of the record(s) sought.

² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

⁴ Signature of individual who is the subject of the record sought.

U.S. Department of Justice

Certification of Identity

FORM APPROVED OMB NO. 1103-0016
EXPIRES 03/31/17

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Full Name of Requester ¹ David B. RankinCitizenship Status ² Citizen Social Security Number ³ Current Address 99 Park Avenue, PH/26th Floor, New York, NY 10016Date of Birth  Place of Birth Portland, Oregon**OPTIONAL: Authorization to Release Information to Another Person**

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Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:
David B. Rankin, BELDOCK LEVINE & HOFFMAN, LLP, 99 Park Avenue, PH/26th Floor, New York, New York 10016

Print or Type Name

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature ⁴  Date 1/11/22

¹ Name of individual who is the subject of the record(s) sought.

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⁴ Signature of individual who is the subject of the record sought.



**U.S. Department of Justice
Federal Bureau of Prisons**

North Central Regional Office

Office of the Regional Counsel

400 State Avenue
Tower II, Suite 800
Kansas City, KS 66101

January 21, 2022

Abigail Robinson
Beldock Levine & Hoffman LLP
99 Park Avenue
PH 26th Floor
New York, NY 10016

Dear Requester:

The Federal Bureau of Prisons (BOP) received your Freedom of Information Act/Privacy Act (FOIA/PA) request. Your request has been assigned a number and forwarded to the processing office noted below. Please make a note of the request number and processing office as you will need to include it in any correspondence or inquiry regarding your request for records pertaining to Everson, Bobby #14009-052.

FOIA/PA Request Number: 2022-01789
Processing Office: NCR

The time needed to complete our processing of your request depends on the complexity of our records search and the volume and complexity of any records located. Each request is assigned to one of three tracks: simple, complex, or expedited. Due to the large number of FOIA/PA requests received by BOP and the limited resources available to process such requests, BOP handles each request on a first-in, first-out basis in relation to other requests in the same track. Your request was assigned to the complex track and placed in chronological order based on the date of receipt.

We determined unusual circumstances exist as the documents responsive to your request must be searched for and collected from a field office, and/or the documents responsive to your request are expected to be voluminous and will require significant time to review, and/or your request requires consultation with at least one other agency with a substantial interest in your request. Because of these unusual circumstances, we are extending the time limit to respond to your request for the ten additional days provided by the statute. Processing complex requests may take up to nine months. Pursuant to 28 C.F.R. § 16.5(b) and (c), you may narrow or modify your request in an effort to reduce the processing time.

Pursuant to 28 C.F.R. § 16.10, in certain circumstances we are required to charge fees for time spent searching for or duplicating responsive documents. If we anticipate your fees will be in excess of \$25.00 or the amount you have indicated you are willing to pay, we will notify you of the estimated amount. At that time, you will have the option to reformulate your request to reduce the fees. If you requested a fee waiver, we will make a decision whether to grant your request after we determine whether fees will be assessed for this request.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, please feel free to contact the NCR at 913-551-1004 or the Federal Bureau of Prisons' (BOP) FOIA Public Liaison, Mr. C. Darnell Stroble at 202-616-7750, 320 First Street NW, Suite 936, Washington DC 20534, or ogc_efoia@bop.gov. You can also check the status of your request on line at <http://www.bop.gov/PublicInfo/execute/foia>.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information, Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. J. F." with a flourish underneath.

Mary A. Noland
Regional Counsel

From: [Abigail Robinson](#)
To: ["ogc_efoia@bop.gov"](mailto:ogc_efoia@bop.gov)
Cc: [David B. Rankin](#); [Regina Powers](#)
Subject: Everson - FOIA No. 2022-01789 - expected time line?
Date: Thursday, February 17, 2022 1:34:00 PM
Attachments: [Everson - 2022.01.11 FOIA to BOP.pdf](#)
[Everson - 2022.01.21 ack ltr FOIA No. 2022-01789.pdf](#)

Greetings:

On January 11, 2022, my office submitted the attached FOIA request and on January 21, 2022, we received the attached acknowledgement letter. I write to respectfully request a timeframe on when we can expect to receive the responsive records.

Thank you,

Abigail L. Robinson (she/her) | Senior Paralegal
Beldock Levine & Hoffman LLP | New York
99 Park Avenue, PH/26th Fl. | New York, NY 10016
Tel: (929) 335-3217 | Fax: (212) 277-5880
ARobinson@blhny.com | <http://www.blhny.com>

This message may contain privileged material. If you are not the intended recipient, please return it.

From: [NCR-FOIA-S \(BOP\)](#)
To: [Abigail Robinson](#)
Subject: Re: Everson - FOIA No. 2022-01789 - expected time line?
Date: Thursday, February 17, 2022 5:08:42 PM

Good afternoon,

Currently, records custodians are searching for records responsive to your request. Please note FOIA requests are processed in the order in which they are received. We are unable to provide an expected date for completion.

Thank you

From: Abigail Robinson <ARobinson@BLHNY.COM>
Sent: Thursday, February 17, 2022 6:36 PM
To: BOP-OGC-EFOIA-S (BOP) <BOP-OGC-EFOIA-S@bop.gov>
Cc: David B. Rankin <DRankin@BLHNY.COM>; Regina Powers <RPowers@BLHNY.COM>
Subject: [EXTERNAL] Everson - FOIA No. 2022-01789 - expected time line?

Greetings:

On January 11, 2022, my office submitted the attached FOIA request and on January 21, 2022, we received the attached acknowledgement letter. I write to respectfully request a timeframe on when we can expect to receive the responsive records.

Thank you,

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